MISSOURI COURT OF APPEALS
WESTERN DISTRICT

KIMBRA LUNCEFORD AND
CHRISTOPHER LUNCEFORD

RESPONDENTS,

v.

MICHAEL C. HOUGHTLIN AND
GLYNN GRAYBILL

APPELLANTS.

DOCKET NUMBER WD71544
DATE: September 14, 2010

Appeal From:

Jackson County Circuit Court
The Honorable Marco A. Roldan, Judge

Appellate Judges:

Division One: James M. Smart, Jr., Presiding Judge, Mark Pfeiffer and Cynthia L. Martin, Judges

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Attorneys:

Paul L. Redfearn III, Kansas City, MO and Richard W. Sullivan, Independence, MO, for respondents.

Jane A. Landrum, Kansas City MO and R. Scott Smith and Christopher A. Brackman, Independence, MO, for appellants.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

KIMBRA LUNCEFORD AND
CHRISTOPHER LUNCEFORD,

RESPONDENTS,

v.

MICHAEL C. HOUGHTLIN AND
GLYNN GRAYBILL,

APPELLANTS.

No. WD71544 Jackson County

Before Division One Judges: James M. Smart, Jr., Presiding Judge, Mark Pfeiffer and Cynthia L. Martin, Judges

Michael Houghtlin and Glynn Graybill appeal from the trial court's entry of an interlocutory judgment in favor of Christopher Lunceford and Kimbra Lunceford finding that a general release entered into between the Luncefords and Christopher's insurance company, GuideOne Specialty Mutual Insurance Company, had been reformed by the parties to the Release, and that the reformed Release thus did not bar the Luncefords' personal injury claims against Houghtlin and Graybill. Houghtlin and Graybill assert numerous errors.

AFFIRMED.

Division One holds:

(1) The trial court did not erroneously declare or apply the law when it stated that in seeking reformation it must be established that a mistake occurred that caused the contract language to differ from what the parties intended in their agreement, as this accurately states the law, notwithstanding the absence of reference to the phrase "true prior intention of the parties."

(2) To establish the prior agreement of the parties sought to be reformed, it is not necessary to show the particular words agreed upon. It is sufficient to show that the parties agreed to accomplish a particular object, and that the instrument executed failed to effectuate their intention.

(3) The trial court heard sufficient evidence to establish by clear, cogent, and convincing evidence that the general release signed by the Luncefords and GuideOne was mutually mistaken as it operated to bar the Luncefords from pursuing claims against Houghtlin and Graybill even though the Luncefords had advised GuideOne of their intent to pursue these claims at the time of settlement.

(4) The evidence relevant to establishing mutual mistake is not limited to evidence that is contemporaneous with the execution of the mistaken instrument. The statement and conduct of the parties occurring after the making of the instrument may be admissible to establish mutual mistake.

(5) The trial court did not error in conducting a trial on the Lunceford's reformation claim in conjunction with conducting a hearing on Houghtlin's and Graybill's respective motions for summary judgment inextricably tied to the reformation claim.

(6) The trial court's minimal findings with respect to the factual circumstances of the accident giving rise to the Luncefords' settlement with GuideOne did not violate Houghtlin's and Graybill's right to jury trial on the issue of liability.

(7) Corporate employees need not be designated as "corporate representatives" in the manner envisioned by Rule 57.03(b)(4) in order to testify as agents of the corporation.

(8) GuideOne employees familiar with GuideOne's policies and procedures relating to the execution of releases, and who participated in authorizing or signing corrected releases with the Luncefords, were competent to testify about GuideOne's intent at the time of the execution of the original release, even though they were not involved in negotiating the original release. Any issue with respect to their knowledge about the original release negotiations would go to the weight to be afforded their testimony and not to its admissibility.

(9) The trial court did not abuse its discretion in failing to issue letters rogatory to permit a second deposition of a GuideOne employee.

(10) The trial court did not apply the incorrect burden of proof for reformation. The trial court found that the Luncefords presented facts that proved by clear and convincing evidence that the original release was mistaken and incorrectly memorialized the settling parties' intent at the time of its execution. Though the trial court also stated that the burden of proof for reformation is more likely true than not when the parties to an instrument agree it should be reformed, the trial court merely acknowledged by this statement that it will be easier to meet the burden of proof required for reformation where there is no disagreement between the parties to the involved instrument.

(11) A non-settling tortfeasor is an intended third party beneficiary to a general release and thus has standing to contest the sufficiency of the evidence presented to argue for reformation of a general release. Though the trial court erroneously questioned whether Houghtlin and Graybill had standing to contest reformation, there was no prejudice, as the trial court did not actually find that Houghtlin and Graybill lacked standing, and did not treat Houghtlin and Graybill as if they lacked standing.

(12) The RESTATEMENT (SECOND) OF CONTRACTS distinguishes between amendments to contracts and reformation of contracts. An amendment of a general release is not permitted as to impact the rights of a non-settling tortfeasor after the tortfeasor has materially changed its position in justifiable reliance on the release. However, reformation of a general

release which negates the rights of a non-settling tortfeasor is permissible unless the non-settling tortfeasor is a good faith purchaser for value or has acquired property in reliance on a release. Unlike an amendment to a contract, reformation modifies a contract to reflect the original intentions of the parties.

Opinion by: Cynthia L. Martin, Judge September 14, 2010

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